



**C**ALIFORNIA LAW REQUIRES DIRECTORS OF CHARITABLE CORPORATIONS TO GIVE NOTICE OR OBTAIN CONSENT FROM THE ATTORNEY GENERAL BEFORE TAKING CERTAIN ACTIONS. HERE IS INFORMATION FOR BOARD MEMBERS AND DIRECTORS ON

# **Nonprofit Transactions Requiring Notice Or Attorney General Approval**

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[www.ag.ca.gov/charities/index.htm](http://www.ag.ca.gov/charities/index.htm)

*A Guide For Public Benefit, Mutual Benefit and Religious Corporations*

- ▶ **VOLUNTARY DISSOLUTION**
- ▶ **SALE OR DISPOSAL OF ALL OR SUBSTANTIALLY ALL CORPORATE ASSETS**
- ▶ **MERGER OF A PUBLIC BENEFIT CORPORATION**
- ▶ **CONVERSION OF A PUBLIC BENEFIT CORPORATION TO MUTUAL BENEFIT OR BUSINESS CORPORATION**
- ▶ **SELF-DEALING TRANSACTIONS**
- ▶ **LOANS TO DIRECTORS / OFFICERS OF PUBLIC BENEFIT CORPORATIONS**
- ▶ **SALE OR TRANSFER OF NONPROFIT HEALTH FACILITIES**

## **Voluntary Dissolution**

### **► Requires 20 days' advance notice or waiver of notice by the Attorney General**

A charitable corporation may not dispose of its assets upon dissolution without submitting the transaction to the Attorney General or seeking approval of the court. If submitted to the Attorney General, the certificate of dissolution filed with the Secretary of State must have attached to it a letter from the Attorney General either waiving objections to the proposed disposition of the corporation's assets or confirming that the corporation has no assets. This requirement applies to public benefit and religious corporations, and to mutual benefit corporations which have assets subject to charitable trust. See Attorney General's Guide to Dissolving A California Nonprofit Corporation ([www.ag.ca.gov/charities/publications/dissolving.pdf](http://www.ag.ca.gov/charities/publications/dissolving.pdf)).

#### *Relevant Statutes*

Public Benefit Corporation - Corporations Code §§ 6615, 6716  
Mutual Benefit Corporation - Corporations Code §§ 8716, 7238  
Religious Corporation - Corporations Code § 9680

## **Sale or Disposition of Substantially All Assets**

### **► Disposition of assets on dissolution requires notice to the Attorney General**

Any California public benefit corporation, or mutual benefit corporation holding assets subject to charitable trust, must provide advance notice to, or request waiver of notice by, the Attorney General for the sale or disposition of all or substantially all of the corporation's assets.

The notice to the Attorney General must include:

- A letter signed by an attorney or a director of the corporation describing the proposed action;
- A copy of the resolution of the board of directors authorizing the proposed action;
- A copy of the corporation's current financial statement;
- A copy of the corporation's articles of incorporation (if not already on file with the Registry of Charitable Trusts) and articles of incorporation of any other corporation that is a party to the proposed action;
- If requested by the Attorney General, independent appraisal or other evidence that the sale price and terms are fair to the corporation (usually in large, complex sales).

#### *Relevant Statutes*

Public Benefit Corporation - Corporations Code § 5913  
Mutual Benefit Corporation - Corporations Code §§ 7913, 7238  
Religious Corporation - Corporations Code § 9633

## **Merger of A Public Benefit Corporation**

### **► Requires 20 days' prior notice to the Attorney General**

Without the prior written consent of the Attorney General, a public benefit corporation may only merge with another public benefit corporation or a religious corporation or a foreign nonprofit charitable corporation. When a public benefit corporation merges or converts into a business or mutual benefit corporation, the Attorney General requires that it first distribute all of its assets to another charity with the same or similar purposes. Applications should include:

- A letter signed by an attorney or a director of the corporation setting forth a description of the proposed action and the material facts concerning the proposed action;

- A copy of the resolution of the board of directors authorizing the proposed action, and board meeting minutes reflecting discussion of the proposed action;
- A copy of the corporation's current financial statement;
- A copy of the corporation's articles of incorporation (if not already on file with the Registry of Charitable Trusts) and articles of incorporation of any other corporation that is a party to the proposed action;
- If requested by the Attorney General, independent appraisal or other evidence that the sale price and terms are fair to the corporation (usually in large, complex sales).

*Relevant Statute*

Corporations Code § 5813.5

## Conversion of Public Benefit Corporation to Mutual Benefit or Business Corporation

- **Requires prior written consent of the Attorney General if corporation has assets**

Directors are not permitted to convert a public benefit corporation that has any assets to any form of proprietary corporation (e.g. a business, mutual benefit, or cooperative corporation) unless they have received the prior written consent of the Attorney General. The Attorney General requires certification that all charitable assets will be transferred to another charity as a condition to consent. Applications should include:

- A letter signed by an attorney or a director of the corporation setting forth a description of the proposed action and the material facts concerning the proposed action;

authorizing the proposed action, and board meeting minutes reflecting discussion of the proposed action;

- A copy of the corporation's current financial statement;
- A copy of the corporation's articles of incorporation (if not already on file with the Registry of Charitable Trusts) and the articles of incorporation of any other corporation that is a party to the proposed action;
- Any independent appraisals of the value of the public benefit corporation that are available. (In complex transactions involving conversion of a large public benefit corporation, the Attorney General usually requires independent valuation appraisals or other evidence that the transaction is fair and reasonable to the public benefit corporation.);
- A statement of the plan for distribution of the assets of the public benefit corporation to a qualified charitable organization, or for payment by the directors or purchasers of the public benefit corporation of the fair market value of the corporation to a qualified charitable organization.

*Relevant Statute*

Corporations Code § 5813.5

## Self-dealing Transactions

- **May be submitted to the Attorney General, either to give notice or to seek approval**

Directors may give notice to, or seek prior approval by, the Attorney General of self-dealing transactions. Notice given to the Attorney General has the effect of shortening the statute of limitations for bringing a civil action to challenge self-dealing. As an alternative, court approval may be sought.

If directors of a public benefit corporation opt to submit a self-dealing transaction to the Attorney General, either to give notice or to seek approval, they should submit the following information to the Attorney General's Office:

- A letter signed by an attorney or a director of the corporation setting forth a detailed description of the self-dealing transaction, the extent to which any director has a material financial interest in the self-dealing transaction, and all material facts concerning the self-dealing transaction;
- A copy of the corporation's current financial statement;
- A copy of the articles of incorporation of the corporation and any amendments, if not already on file with the Registry of Charitable Trusts;
- A copy of the bylaws of the corporation and any amendments, if not on file with the Registry of Charitable Trusts;
- Copies of all minutes of meetings of the Board of Directors or committees of the Board of Directors that reflect any discussions or evaluations of the self-dealing transaction;
- If not covered above, a letter signed by the interested director setting forth a description of the director's material financial interest in the self-dealing transaction, listing all material facts concerning the transaction;
- Other information specified by the Attorney General to complete the analysis of the self-dealing transaction.

### *Relevant Statute*

Corporations Code § 5233

## Loans to Directors / Officers of Public Benefit Corporations

- **Requires prior-written consent of the Attorney General, with some exceptions; Court-approval is alternative**

A public benefit corporation must obtain prior written consent from the Attorney General before making a loan to a director or officer, with certain exceptions for residential loans. Directors seeking Attorney General's consent to a loan from a public benefit corporation to a director or officer of the corporation should follow the same procedures set forth for self-dealing transaction approval requests. Court approval may be sought as an alternative.

### *Relevant Statute*

Corporations Code § 5236

## Sale or Transfer of Nonprofit Hospital Facilities

- **Requires Attorney General approval of sale or transfer of nonprofit hospital assets**

California law requires that any public benefit corporation that operates or controls a "health facility" (as defined in Health and Safety Code section 1250) provide written notice to the Attorney General and obtain consent prior to any sale or transfer of ownership or control of a material amount of the assets of the corporation. This requirement does not apply to nonprofit health care service plans that are subject to licensing and regulation by the California Department of Managed Care. ( See *Van de Kamp v. Gumbiner*, (1990) 221 Cal.App.3d 1260.)

### *Relevant Statutes*

Corporation Code §§ 5914-5925, 10820, 10821  
Title 11 California Code of Regulations § 999.5  
Health & Safety Code § 340 et seq.